

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SECURITIES & EXCHANGE COMMISSION

Plaintiff

v.

PATRICIA B. ROCKLAGE, WILLIAM M.
BEAVER, and DAVID G. JONES

Defendants.

C.A. No. 05-CV-10074 MEL

DEFENDANT PATRICIA B. ROCKLAGE'S MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), defendant Patricia B. Rocklage moves to dismiss the Complaint. As grounds for this motion, she states that Supreme Court precedent clearly establishes that the facts alleged in the Complaint do not state a claim for a violation of the insider trading laws. As a matter of law, Mrs. Rocklage cannot be liable for having “misappropriated” information in deceptive breach of a duty to her husband, Dr. Rocklage, because she told him that she intended to disclose the material nonpublic information to her brother. Nor on the facts alleged did Mrs. Rocklage have any duty to Cubist shareholders that could have been breached by her disclosure of information to her brother. These grounds are set forth more fully in the accompanying Memorandum of Law.

REQUEST FOR ORAL ARGUMENT

Defendant Patricia B. Rocklage respectfully requests oral argument pursuant to Local Rule 7.1(D).

WHEREFORE, defendant Patricia B. Rocklage respectfully requests that the Court:

- (i) Dismiss the Complaint with prejudice, without leave to re-plead; and enter Judgment for her on all claims; and
- (ii) Award other relief as is fair and just.

Respectfully Submitted,

/s/ Daniel H. Gold

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Dated: February 18, 2005

CERTIFICATE OF SERVICE

I, Daniel H. Gold, hereby certify that I caused a copy of the within document to be served electronically on:

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